is no more than a court of equity is called upon to do whenever it undertakes to run a railroad by a receiver, and as to superintendence, the plaintiff may be depended upon jealously to take care of that. That equity may well give relief in such cases has been recognized in a number of decisions. *Joy* v. *St. Louis*, 138 U. S. 1; *Wolverhampton Co.* v. *London Co.*, 16 Eq. 433. They represent decidedly the better view, and are authority for declaring the principal case correct.

Where the contract to be enforced is, as in the principal case, that of a public service company, another point sometimes has to be considered. A railroad being a common carrier has duties towards the public. Any contract, therefore, which would seriously interfere with these duties a court of equity, in the exercise of its discretionary powers, should not enforce. Thus, where the full performance of the railroad's contract would hinder or endanger the public travel, the plaintiff should be left to his action at law. *Conger* v. *N. Y. Co.*, 120 N. Y. 29. And where the contract is to build a station at a particular point and at no other, since the free consideration of the public's convenience is thereby prevented, relief should be refused in equity, and for that matter, it seems, at law. *Williamson* v. *C. R. I. & P. R. R. Co.*, 53 Ia. 126. The principal case which involves no such question seems to have been correctly decided on principle, and is believed to represent the modern tendency of the law.

RULES GOVERNING THE CREATION OF CONTINGENT REMAINDERS. — In spite of the vast learning that has from the earliest times been brought to bear on the law of real property, to make its rules and the reasons for them clear, several points have remained the subject of controversy. One point of dispute is whether there co-exists with the rule against perpetuities a separate and independent rule, that although an estate may be limited to an unborn person for life, a remainder cannot be limited to the children of such unborn person In 1890 the Court of Appeal held that there was such a rule. *Whitby* v. *Mitchell*, 44 Ch. D. 85. Recently the Chancery Division refused to apply the rule to a similar limitation of personalty. *In re Bowles*, [1902] 2 Ch. 650. The decision is clearly correct, for there is existing authority that personalty may be appointed to an unborn child for life with remainder to unborn children. *Routledge* v. *Dorril*, 2 Ves. Jr. 357. Though the court in the principal case was satisfied to rest its decision on that authority, it questioned *obiter* the necessity for any rule other than the rule against perpetuities to govern the creation of remainders whether of realty or personalty.

Mr. Joshua Williams, upon whose authority the Court of Appeal relied in *Whitby* v. *Mitchell*, *supra*, was of opinion that the creation of contingent remainders is governed, not by the general rule of remoteness, but by an independent rule, namely, the rule against a possibility on a possibility. WILLIAMS, REAL PROP., 6th ed., 245. Professor John C. Gray has expressed the opinion that the creation of contingent remainders is, like the creation of other future interests, governed by the rule against perpetuities. GRAY, PERPETUITIES, §§ 285, 298. Mr. Justice Kay believed that it was governed by both rules. *Re Frost*, 43 Ch. D. 246, 253, 254.

The rule that a remainder to be good must depend on a common possibility, and not on a double possibility, was first enunciated by Chief Justice Popham in *Rector of Chedington's Case*, 1 Co. 153 a, 156 b. This

conceit though accepted for a time by Lord Coke was later definitely repudiated by him. *Blamford* v. *Blamford*, 1 Roll. R. 318, 321. Lord Chancellor Nottingham, too, said it had no basis in law. *Duke of Norfolk's Case*, 3 Ch. Cas. 29. In the middle of the eighteenth century, about eighty years after Lord Nottingham had settled the matter, the theory that successive remainders for life are invalid was first mentioned as an independent rule, *Spencer* v. *Marlborough*, 3 Bro. P. C., Toml. ed., 232. Lord Northington, however, admitted that he searched in vain for any reason for it as an independent rule. He did not refer it to Popham's doctrine. It is first traced to that doctrine by Lord Mansfield in *Chapman* v. *Brown*, 3 Burr. 1626, 1634. It received its strongest support in opinions by Mr. Booth and Mr. Yorke given in private practice. 2 CAS. & OP. 432, 435, 440. Mr. Williams at first did not accept the view. WILLIAMS, REAL PROP., 1st ed., 211, 212; but later adopted it. See WILLIAMS, REAL PROP, 3rd ed., 227, 406. Without further authority the Court of Appeal made the rule law in *Whitby* v. *Mitchell*, *supra*. It is submitted, then, that the rule has no sound basis in the law, for if it be considered that Lord Nottingham found it entirely without reason, and Lord Northington eighty years later searched in vain for reason for what he considered an independent doctrine, it seems impossible to contend successfully that the rule is older than the rule against perpetuities and that it has existed side by side with it. See GRAY, *supra*, §§ 125–134, 191–199, 285–298.

The idea that the creation of contingent remainders was not governed by the ordinary rule of remoteness seems to have been due to the fact that the danger of perpetuity was first felt in connection with executory limitations which were indestructible and which for a time furnished most of the cases. But, though the destructibility of contingent remainders may have kept questions of remoteness with regard to them from arising, it furnishes no sufficient reason for exempting the creation of them from the ordinary rule. See Gray, *supra*. Other circumstances that led to the idea that the creation of contingent remainders was outside the rule against perpetuities, were the fact that remainders are common law interests, and the belief that the rule was called into existence by the enactment of the Statute of Uses and the Statute of Wills. This, too, has been shown to be incorrect, for executory limitations of chattels real were known to the common law; and it was in connection with bequests of such interests that the rule against perpetuities was established. See GRAY, *supra*, § 296.

Since the rule against perpetuities governs all contingent equitable limitations, and all contingent limitations of personalty; and since contingent remainders are now by law indestructible, it seems highly desirable that the creation of contingent legal remainders should be subject to that rule, particularly as there is no large body of precedent to be overturned in order to establish the symmetry of the law.

RIGHTS IN PERCOLATING WATERS. — It seems to be the general opinion that the law of percolating waters, though of recent development, is fairly well settled in accordance with the leading English case of *Chasemore* v. *Richards*, 7 H. L. Cas. 349. See GOULD, WATERS, § 280. It is interesting therefore to note in connection with a recent California case how entirely without support the English decision seems to be in the United States, and